Proposition 34 Reporting Information for State Candidates

FPPC Fact Sheet 34-01, Volume 2

This second issue of Fact Sheet 34-01 contains updated information on Proposition 34 disclosure requirements and other rules. Proposition 34, which took effect January 1, 2001, added contribution limits, voluntary expenditure limits and made other major changes to the Political Reform Act.

The Fair Political Practices Commission (FPPC) continues to issue new regulations and opinions interpreting Proposition 34. Refer to the Political Reform Act (Government Code sections 81000-91014), the FPPC regulations (Title 2, Division 6, of the California Code of Regulations), and updated information available on the FPPC web site, *www.fppc.ca.gov*.

Note: For candidates for statewide elective office, Proposition 34 contribution limits and voluntary expenditure limits do not take effect until November 6, 2002. However, other major provisions are in effect right now for all candidates for state offices. Additional requirements for all state candidates were enacted on September 4, 2001, as a result of a new state law, SB 34 (Stats. 2001, Chapter 241), and are incorporated in this fact sheet.

1. Update To Fact Sheet 34-01, Volume 1

Voluntary Expenditure Limits:

Volume 1 of Fact Sheet 34-01 discussed the types of expenditures that count for purposes of the voluntary expenditure limits. In October 2001, the Commission adopted Regulation 18540 to further clarify how the expenditure limits will be applied for candidates who have accepted them.

Generally, expenditures must be counted toward the next election that follows the date of the expenditure. Expenditures made on the day of an election must be counted toward that election. Expenditures covered by this rule include the following:

- ♦ Purchase, mailing or distribution of campaign literature, signs, buttons, bumper stickers and similar items.
- ♦ Telephone banks, including costs of design and operation, costs of installing or renting telephone lines and equipment, toll charges, personnel costs, rental of office space, and associated consultants' fees.

- Professional services, including campaign consultants and pollsters, unless specific fees or costs are allocated to a different election under a contract with the person providing the services.
- Overhead expenses, including office space, utilities, office equipment, furnishings, supplies, internal copying and printing, monthly telephone charges, personnel costs, and travel expenses.

Expenditures for radio, television, newspaper, or other media advertising count toward the election following the date set out in the contract for broadcast, publication, or dissemination. If an advertisement will be published or broadcast on the day of an election, the expenditure counts toward that election.

Expenditures for campaign fundraising are counted toward the election for which the funds were raised. If it is not possible to allocate fundraising costs using this method, allocate the expenditures to the election following the date on which they were made. If post-election expenditures are made to raise funds to pay off debts, those expenditures do not count toward the voluntary expenditure limits.

Keep accurate records to document how expenditures were allocated and how they were reported on Line 22 of the Form 460 Summary Page. Remember that the amount reported on Line 22 must also include unpaid bills (accrued expenses) and nonmonetary contributions for goods or services that count toward the expenditure limits.

Transfers Between Committees Controlled by a Candidate

Section 4 of Fact Sheet 34-01, Vol. 1, discussed transfers between a candidate’s controlled committees and the requirement to attribute transferred funds to persons who originally made contributions to the committee making the transfer. Please note the following additional information:

- State candidates who are required to electronically file their campaign reports must file additional online reports to disclose contributions of $5,000 or more and $1,000 or more. (See Section 1 of Fact Sheet 34-01, Vol. 1.) These reports are not required for transferred funds that are attributed to the transferring committee’s contributors.

- When transferring assets (such as supplies, furnishings, and office equipment) from one controlled committee to another, it is not necessary to report the transfer or to value the assets and attribute the value to the transferring committee’s contributors.

2. Lifting the Voluntary Expenditure Limits

Candidates who accept the voluntary expenditure limits are no longer bound by those limits if an opposing candidate contributes personal funds to his or her campaign in excess of the expenditure limits. This is the **only** event that lifts the expenditure limits. (See Section 2 of Fact Sheet 34-01, Vol. 1.)

If a candidate contributes personal funds to his or her campaign in excess of the expenditure limits during a primary election, the expenditure limits are lifted for all candidates, regardless of party affiliation, running for the same office in both the primary and general elections. The same is true for special and special runoff elections. (Regulation 18543.)

3. Returning Contributions

There are several provisions in the Political Reform Act and Commission regulations that regulate the return of contributions.

- ***Reporting:*** A contribution is not required to be reported if it is not deposited, cashed, or negotiated and it is returned to the contributor before the closing date of the campaign statement on which it would otherwise be reported. (Section 84211(q).) A "late contribution" (a contribution of $1,000 or more received during the last 16 days before an election) is not required to be reported if it is not deposited, cashed, or negotiated and it is returned within 24 hours of receipt. (Section 84203(c).) Once a contribution is deposited, cashed, or negotiated, it must be disclosed on the next campaign statement, even if it is subsequently returned.

- ***Contributions in Excess of the Contribution Limits:*** A contribution that exceeds the contribution limits is not considered "accepted" if it has not been deposited, cashed, or negotiated and it is returned to the donor within 14 days of receipt. In the case of a nonmonetary contribution, the contribution must be returned or a monetary refund must be given to the contributor within 14 days of receipt. (Regulation 18531.)

- ***Missing Contributor Information:*** A contribution of $100 or more must be returned within 60 days of receipt if the candidate or committee has not obtained the contributor's name, address, and in the case of a contributor who is an individual, his or her occupation and employer. (Section 85700; also see Section 5 below for a more detailed discussion.)

- ***General Rule:*** Except as described above, a state candidate may return all or part of a contribution at any time. (Section 85319.) "Surplus funds" also may be returned to contributors. (Section 89519.) Note that if a state candidate is defeated in a primary election or withdraws from the general election, any general election funds must be refunded to the contributors *on a pro rata basis* less any expenses associated with raising and administering the funds. (Section 85318.)

4. Committee Termination Requirements

Committees established for elections held prior to January 1, 2001, must be terminated under a new regulation adopted by the Commission. (Emergency Regulation 18404.2.) A committee established for elective state office that is controlled by a candidate who has never held or who no longer holds the office for which the committee was formed must be terminated by **December 31, 2002**.

In order to terminate, the committee must dispose of all cash, close its bank account, and pay its debts or declare that it has no ability to pay its debts. No new contributions may be received and no further expenditures may be made once the committee has been terminated. (Regulation 18404.) A Statement of Organization (Form 410) must be filed stating that the committee has been terminated.

Notification of Creditors and Requests for Extensions

Committees must provide 60 days' notice to creditors prior to termination. Committees also may request to delay their termination for up to six months if the committee is continuing to receive contributions or anticipates receiving contributions for the purpose of paying debts, if the candidate or committee is a party to litigation, or for other good cause. The request for extension must be submitted to the Executive Director of the Fair Political Practices Commission no later than 30 days prior to the due date for the committee's termination.

5. Obtaining Occupation and Employer Information

Candidates and committees must disclose detailed information about contributors of $100 or more. Each contributor's name and address must be disclosed, and if the contributor is an individual, his or her occupation and employer also must be disclosed. Proposition 34 added a new requirement to the Political Reform Act to ensure that committees obtain proper identification of contributors. Section 85700 states that a committee must return, **within 60 days of receipt**, a contribution of $100 or more for which the candidate or committee does not have in its records the contributor's name, address, occupation, and employer.

Contributions may be deposited in a committee's bank account pending receipt of the information, in which case they must be reported on the next campaign statement filed. The campaign statement must be amended within 70 days from its closing date to disclose the missing contributor information unless the contribution is returned to the donor. (Regulation 18570.) Only the Form 460 is subject to the 70-day amendment requirement.

6. Establishing a Legal Defense Fund

State candidates may establish a legal defense fund. (Section 85304.) Contributions raised for a legal defense fund are not subject to Proposition 34's contribution or voluntary expenditure limits. However, a candidate may raise, in total, no more than is reasonably necessary to cover attorney fees and other legal costs related to the proceeding for which the fund is created. Leftover funds may be transferred to a campaign bank account, subject to the transfer and attribution requirements of section 85306 (see Section 4 of Fact Sheet 34-01, Vol. 1), or may be disposed of as set out in section 89519(b)(1)-(5).

A separate bank account and committee must be set up for the funds, and the words "Legal Defense Fund" must be included in the name of the committee. The committee must file a Statement of Organization (Form 410) and quarterly campaign statements (Form 460), as follows:

Period Covered	Form 460 Filing Deadline
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	October 31
October 1 – December 31	January 31

(Regulation 18530.4.)

Questions? Call the FPPC's toll-free Advice Line (1-866-ASK FPPC). The Political Reform Act, FPPC regulations, forms, manuals, fact sheets, and other important information can be found on the FPPC website at *www.fppc.ca.gov*.